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(ii) The organization or subdivision, itself, operates the land; and

(iii) No part of the net earnings of the organization or subdivision accrues to the benefit of any private shareholder or individual.

(2) If Reclamation determines that a religious or charitable organization or any of its subdivisions does not meet the criteria listed in paragraph (b)(1) of this section, then:

(i) If the central organization has not met the criteria, Reclamation will treat the entire organization, including all subdivisions, as a single entity; or

(ii) If a subdivision has not met the criteria, only that subdivision and any subdivisions of it will be treated as a single entity and not the central organization or other subdivisions of the central organization; and

(iii) In order to ascertain the acreage limitation status, Reclamation determines the total number of members in both the organization that has not met the criteria and in any subdivisions that are under that organization. If Reclamation determines that total number equals:

(A) More than 25 members, then Reclamation treats that organization and every subdivision under that organization as a single legal entity with a limited recipient status; or

(B) 25 members or less, then Reclamation treats that organization and every subdivision under that organization as a single legal entity with a qualified recipient status.

(c) *Acreage limitation status of prior law religious or charitable organizations or subdivisions.* (1) Religious or charitable organizations and each of their subdivisions are treated as separate prior law corporations, if neither the district nor that religious or charitable organization or its subdivisions elect to conform to the discretionary provisions.

(2) Reclamation will treat the entire organization, including all subdivisions, as a single prior law corporation, if the central organization or any subdivisions do not meet the criteria specified in paragraph (b)(1) of this section.

(d) *Affiliated farm management between a religious or charitable organization and a more central organization of the same affiliation.* Reclamation permits a sub-

division of a religious or charitable organization to retain its status as an individual entity while cooperating with a more central organization of the same affiliation in farm operation and management. Reclamation permits affiliated farm management regardless of whether the subdivision is the owner of the land being operated.

§ 426.10 Public entities.

(a) *Application of the acreage limitation provisions to public entities.* Reclamation does not subject public entities to the acreage limitation provisions of Federal reclamation law with respect to land that Reclamation determines public entities farm primarily for nonrevenue producing functions. However, public entities are required to meet certification and reporting requirements as specified in § 426.18.

(b) *Sale of public land.* Reclamation does not require public entities to seek price approval before they sell non-exempt lands. Once sold, Reclamation can make irrigation water available to such land if the purchaser meets RRA eligibility requirements.

(c) *Leasing of public land.* Public entities can lease irrigation land that they own or control to eligible landholders. Land leased from a public entity counts towards the lessee's ownership and nonfull-cost entitlement.

§ 426.11 Class 1 equivalency.

(a) *General application.* Class 1 equivalency determinations will establish, on a district-wide basis, the acreage of land with lower productive potential (Classes 2, 3, and 4) that would be equivalent in productive potential to the most suitable land (Class 1) in the local agricultural economic setting.

(1) Reclamation establishes equivalency factors by comparing the weighted average farm size required to produce a given level of income on each of the lower classes of land with the farm size required to produce that income level on Class 1 land.

(2) For equivalency purposes, Reclamation will classify all irrigable land as Class 1, 2, or 3; no other classifications are permissible for irrigable land. Class 4 and special-use land classes will be allocated to one of these three classes on a case-by-case basis.

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(3) Once the Class 1 equivalency determinations have been made, individual landowners with land classified as 2 or 3 for equivalency purposes will have the right to adjust their actual landholding acreage to its Class 1 equivalent acreage.

(4) In a district subject to prior law, Class 1 equivalency can be applied only to landholders who are subject to the discretionary provisions.

(5) Requests for equivalency determinations will be scheduled by region, with the regional director of each Reclamation region having responsibility for such scheduling. Generally, requests will be honored on a first-come-first-served basis. However, if requests exceed the region's ability to fulfill them expeditiously, priority will be given on the basis of greatest immediate need.

(b) *Who may request a Class 1 equivalency determination?* Only districts may request Class 1 equivalency determinations. Upon the request of any district subject to the acreage limitation provisions, Reclamation will make a Class 1 equivalency determination for that district. Equivalency determinations can be made only on a district-wide basis.

(c) *Definition of Class 1 land.* Class 1 land is defined and will be classified as that irrigable land within a particular agricultural economic setting that:

(i) Most completely meets the various parameters and specifications established by Reclamation for irrigable land classes;

(ii) Has the relatively highest level of suitability for continuous, successful irrigation farming; and

(iii) Is estimated to have the highest relative productive potential measured in terms of net income per acre (reflecting both productivity and costs of production). The equivalency analysis will establish the acreage of each of the lower classes of land which is equal in productive potential (measured in terms of net farm income) to 1 acre of Class 1 land.

(2) All land that Reclamation has not classified, or for which Reclamation has not yet performed the necessary economic studies, will be considered Class 1 land for the purposes of determining entitlements under these rules until such time as the necessary classi-

fications or studies have been completed.

(d) *Determination of land classes.* The extent and location of Class 1 land and land in lower land classes in a district have been, or will be, determined by Reclamation.

(1) Reclamation will take into account the influence of economic and physical factors upon the productive potential of the land lying within the district. These factors will include, but are not limited to the following and their effect on agricultural practices:

(i) The physical and chemical characteristics of the soil;

(ii) Topography;

(iii) Drainage status;

(iv) Costs of production;

(v) Land development costs;

(vi) Water quality and adequacy;

(vii) Elevation;

(viii) Crop adaptability; and

(ix) Length of growing season.

(2) Acceptable levels of detail for land classification studies to be utilized in making Class 1 equivalency determinations for a given district will be evaluated on the basis of the physical and agricultural economic characteristics of the area. For districts where the sole purpose of the land classification study is for a Class 1 equivalency determination, the level of detail of the land classification to be made will never be greater than that required to make a Class 1 equivalency determination.

(3) Reclamation will pay for at least a portion of the costs associated with the land classification study. The amount to be paid by Reclamation will be determined as follows:

(i) Reclamation has provided basic land classification data as part of the project development process since 1924. Accordingly, if Reclamation determines that acceptable land classification data are not available for making requested Class 1 equivalency determinations and if the project was authorized for construction since 1924, such data will be made available at Reclamation's expense; or

(ii) For each district located in projects authorized for construction prior to 1924, Reclamation will pay 50 percent of the costs and the district must pay 50 percent of the costs of new

land classification studies required to make accurate Class 1 equivalency determinations.

(4) When basic land classification data are available for a district, but the district does not agree with the accuracy or asserts that the data have become outdated, the district may request, and Reclamation may perform, a reclassification under the authority contained in the Reclamation Project Act of 1939 (43 U.S.C. 485), with the following conditions:

(i) The requesting district will pay 50 percent of the costs of performing such reclassifications and 100 percent of the costs of all other studies involved in the equivalency process; and

(ii) The results of such reclassifications will be binding upon the requesting district and Reclamation.

(e) *Additional studies required for Class 1 equivalency determinations.* Economic studies related to Class 1 equivalency determinations will measure net farm income by land classes within the district.

(1) Net farm income will be determined by considering the disposable income accruing to the farm operator's labor, management, and equity from the sale of farm crops and livestock produced on irrigated land, after all fixed and variable costs of production, including costs of irrigation service, are accounted for.

(2) Net farm income will be the measure of productivity to establish equivalency factors reflecting the acreage of each of the lower classes of land which is equal in productive potential to 1 acre of Class 1 land.

(3) The cost of performing new or additional economic studies and computations inherent in the equivalency process will be the responsibility of the requesting district.

(f) *Use of Class 1 equivalency with the acreage limitation provisions.* Class 1 land and land in lower classes will be identified on a district basis by Reclamation using a standard approach in which the land classification for the entire district is considered. Equivalency factors will then be computed for the district and applied to specific tracts within individual landholdings. If adequate land classification data are not available, they will be developed as

specified in paragraph (d) of this section using standard procedures established by Reclamation.

(1) For purposes of ownership entitlement, Class 1 equivalency will not be applied until a final determination has been made by Reclamation concerning the district's request for equivalency.

(i) Reclamation will protect excess landowners' property interests by ensuring that equivalency determinations are completed in advance of maturity dates on recordable contracts, provided the district requests an equivalency determination at least 6 months prior to the maturity of the recordable contract, the district fulfills its obligations under this section, and the district notifies Reclamation 6 months in advance of the maturity dates for the need for an expedited review.

(ii) Once the determination has been made, owners of land subject to recordable contracts may withdraw land from such recordable contracts in order to reach their ownership entitlement in Class 1 equivalent acreage.

(iii) The requirement that land under recordable contract be sold at a price approved by Reclamation does not apply to land which is withdrawn from a recordable contract and included as part of a landowner's nonexcess landholding as a result of an equivalency determination.

(iv) In cases of equivalency determination disputes, Reclamation will not undertake the sale of the reasonable increment of the excess land under a matured recordable contract which could be affected by a reclassification, provided the dispute is determined by Reclamation not to be an attempt to thwart the sale of excess land.

(2) For purposes of nonfull-cost entitlement, Class 1 equivalency will not be applied until a final determination has been made by Reclamation on a district's request for equivalency.

(i) During the time when such determinations are pending, the full-cost rate will be assessed based on a landholder's nonfull-cost entitlement as determined in the absence of Class 1 equivalency.

(ii) Following Reclamation's final determination, Reclamation will reimburse the district for any full-cost

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charges that would not have been assessed had Class 1 equivalency been in place from the date of the district's request. Districts will return such reimbursements to the appropriate landholders.

(3) A landholder with holdings in more than one district is entitled to equivalency only in those districts which have requested equivalency (or are already subject to equivalency). That part of the landholding in a district or districts not requesting equivalency will be counted as Class 1 land for purposes of overall entitlement.

(g) *Prior equivalency determinations.* In districts where equivalency was a provision of project authorization, those equivalency factor determinations will be honored as originally calculated unless the district requests a reclassification.

§ 426.12 Excess land.

(a) *The process of designating excess and nonexcess land.* If a landowner owns more land than the landowner's ownership entitlement, all of the landowner's nonexempt land must be designated as excess and nonexcess as follows:

(1) The landowner designates which land is excess and which is nonexcess in accordance with the instructions on the appropriate certification or reporting forms; or

(2) If a landowner fails to designate his or her land as excess or nonexcess on the appropriate certification or reporting forms:

(i) And all of the landowner's nonexempt land is in only one district:

(A) If the district's contract with Reclamation includes designation procedures, then the land is designated according to those procedures; or

(B) If the district's contract with Reclamation does not include designation procedures, then:

(1) Reclamation will notify the landowner and the district that the landowner must designate the land as excess and nonexcess on the appropriate certification or reporting forms within 30-calendar days of the notification;

(2) If the landowner fails to make the designation within 30-calendar days of notification, the district will make the designation within 30-calendar days thereafter; or

(3) If the district does not make the designation within its 30-calendar days, Reclamation will make the designation; or

(ii) If the landowner owns nonexempt land in more than one district, then Reclamation will notify the landowner and the districts that the landowner has 60-calendar days from the date of notification to make the designation. If the landowner does not make the designation in the 60-calendar days, Reclamation will make the designation.

(b) *Changing excess and nonexcess land designations.* (1) Landowners must file with the district(s) in which the land is located and with Reclamation the designation of excess and nonexcess land. The designation of land as excess is binding on the land. However, the landowner may change the designation under the following circumstances without Reclamation's approval if:

(i) The excess land becomes eligible to receive irrigation water because the landowner becomes subject to the discretionary provisions as provided in § 426.3;

(ii) A recordable contract is amended to remove excess land when the landowner's entitlement increases because the landowner becomes subject to the discretionary provisions as provided in paragraph (j)(5) of this section; or

(iii) The excess land becomes eligible to receive irrigation water as a result of Class 1 equivalency determinations, as provided in § 426.11.

(2) No other redesignation of excess land is allowable without the approval of Reclamation in accordance with established Reclamation procedures. Reclamation will not approve a redesignation request if:

(i) The purpose of the redesignation is for achieving, through repeated redesignation, an effective farm size in excess of that permitted by Federal reclamation law; or

(ii) The landowner sells some or all of his or her land that is currently classified as nonexcess.

(3) When a redesignation involves an exchange of nonexcess land for excess land, a landowner must make an equal exchange of acreage (or Class 1 equivalent acreage) through the redesignation.